



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 7, 2003

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2003-0854

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176283.

The Travis County Sheriff's Office (the "sheriff") received a request for a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You have marked certain witness information that you seek to withhold under section 552.101 of the Government Code. Upon review, we find that the information you have marked is not highly intimate or embarrassing. Thus, this information may not be withheld under section 552.101 in conjunction with common-law privacy. See Open Records Decision No. 455 (1987) (absent special circumstances, home addresses and telephone numbers of

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

private citizens generally not protected under privacy exceptions of Public Information Act). We note that this office has also determined that under certain "special circumstances," section 552.101 protects information that ordinarily would be subject to public disclosure. *See* Open Records Decision 169 at 6-7 (1977) (describing special circumstances under which certain home addresses are private). Such special circumstances occur only in a very narrow set of situations. *Id.* at 6. Special circumstances warranting nondisclosure of public information exist when release of the information would cause "an imminent threat of physical danger" to a person. *Id.* This office has determined that special circumstances do not include a desire for privacy or "a generalized and speculative fear of harassment." *Id.* at 7. Upon review, we determine you have not demonstrated the existence of special circumstances that warrant the withholding of the information you have marked under section 552.101. Accordingly, we determine that the sheriff may not withhold the information you have marked under section 552.101 of the Government Code.

You also contend that the submitted records include a compilation of an individual's criminal history that is excepted under section 552.101 and common-law privacy. When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, you assert that the responsive information consists of a compilation of local law enforcement records. Upon review, however, we note that the information at issue is not a compilation of an individual's criminal history. Furthermore, we note that the request does not ask for a compilation of a named individual's criminal history, but rather for all information relating to a particular incident, identified by a specific offense report number. Therefore, we determine that the present request does not implicate an individual's common-law right of privacy as contemplated in *Reporters Committee*. Accordingly, the sheriff may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with the common-law right of privacy pursuant to the decision in *Reporters Committee*.

Section 552.101 also encompasses information protected by other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code. We note that section 411.082(2) of the Government Code defines CHRI as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal charges and their dispositions." *See also* Gov't Code §§ 411.081(a)(1), (b) (chapter 411 does not apply to CHRI contained in posters, announcements or lists for identifying or apprehending fugitives or wanted persons, or to CHRI related to the offense for which a person is involved in the criminal justice system). You have marked information

in the responsive records that you claim is CHRI and must be withheld. However, although you state that the department obtained this information from the TCIC and NCIC networks, we note that the information you have marked is not CHRI made confidential under subchapter F of chapter 411 of the Government Code. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with federal law or chapter 411.

The submitted documents also contain social security numbers that you claim are excepted from disclosure under section 552.101 of the Government Code. You acknowledge that the social security numbers were neither obtained nor maintained by the sheriff pursuant to any provision of law enacted on or after October 1, 1990. Consequently, the social security numbers are not made confidential under the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). You contend, however, that the social security numbers at issue are protected under common-law privacy. This office has previously determined that social security numbers are not protected under common-law privacy. Open Records Decision Nos. 622 at 2 (1994), 169 at 8 (1977). Thus, the sheriff may not withhold the social security numbers under section 552.101.

Finally, we note that the information at issue also contains Texas driver's license numbers, license plate numbers, and motor vehicle registration information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the information that the sheriff must withhold pursuant to section 552.130 of the Government Code. The remainder of the responsive information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dr. Saldivar', with a stylized flourish at the end.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 176283

Enc: Submitted documents

c: Mrs. Flossie Simmons
P.O. Box 362
Elgin, Texas 78621
(w/o enclosures)